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9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE CENTRAL DISTRICT OF CALIFORNIA
11 RIVERSIDE DIVISION
12

13 **JONATHAN WAYNE BOTTEN,**
14 **SR., et al.,**
15 Plaintiffs,
16 **v.**
17 **STATE OF CALIFORNIA, et al.,**
18 Defendants.
19

No. 5:23-cv-257 KK (SHKx)

**STATEMENT OF
UNCONTROVERTED FACTS**

Date: March 20, 2025
Time: 9:30 a.m.
Courtroom: 3 (3rd Floor)
Judge: The Honorable Kenly
Kiya Kato
Trial Date: July 28, 2025
Action Filed: February 17, 2023

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21 Defendants California Highway Patrol Officers Michael Blackwood, Isaiah
22 Kee, and Bernardo Rubalcava (State Defendants) submit the following
23 uncontroverted facts in support of their motion for summary judgment.

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Moving Party's Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
<p>1. In February 2021, Defendant Michael Blackwood was an officer with the California Highway Patrol (CHP), assigned to patrol. <i>Evidence:</i> Blackwood Dep. 5:25-6:10, Ex. P.¹</p>	
<p>2. In February 2021, Defendant Isaiah Kee was a Sergeant with CHP, assigned to patrol. <i>Evidence:</i> Kee Dep. 13:17-14:5, Ex. O.</p>	
<p>3. In February 2021, Defendant Bernardo Rubalcava was a CHP officer, assigned to patrol. <i>Evidence:</i> Rubalcava Dep. 9:25-10:20, 66:4-8, Ex. Q.</p>	
<p>4. On February 16, 2021, at approximately 5:45 p.m., CHP officers, including Kee, were investigating a car-to-car shooting, which occurred on highway Interstate 15. The suspect, later identified as decedent Hector Puga, drove along the passenger side of the victim's vehicle, and fired one shot at the victim and struck the victim's front passenger door. Puga fled in his vehicle after shooting at the victim. The victim described Puga as a Hispanic male, heavy set, bald, and Puga's vehicle as a white Ford Expedition, with large black rims, and a funeral procession sticker on the back window. <i>Evidence:</i> Arrest-Investigation Report 1-12, Ex. N.</p>	

¹ All exhibits referenced in Defendants' uncontroverted facts are attached to the accompanying Declaration of Diana Esquivel.

Moving Party's Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
<p>5. Blackwood and Rubalcava were briefed about the freeway shooting at the beginning of their work shifts. <i>Evidence:</i> Blackwood Dep. 51:3-20, Ex. P; Rubalcava Dep. 77:14-78:15, Ex. R.</p>	
<p>6. At approximately 1:30 a.m. on February 17, 2021, Blackwood and Rubalcava, who were riding in the same CHP patrol vehicle, observed a white Ford Expedition that matched the vehicle involved in the earlier freeway shooting, and initiated a traffic stop. <i>Evidence:</i> Blackwood Dep. 51:3-10, Ex. P; Rubalcava Dep. 77:14-17, Ex. Q; Blackwood MVARs, Part 1 at 00:01-0:30, Ex. D.²</p>	
<p>7. Puga pulled over, but did not comply with the officers' commands to turn off the car and roll his window down. Instead, Puga drove away and a pursuit ensued. <i>Evidence:</i> Blackwood MVARs, Part 1 at 01:35-02:00, Ex. D.</p>	
<p>8. Kee and San Bernardino County Sheriff's Deputies Adams and Vaccari joined the pursuit that lasted over an hour, at high speeds through residential and commercial areas. <i>Evidence:</i> Kee MVARs, Part 1 at 02:50-38:50, Ex. B; Blackwood MVARs, Part 1 at 01:50-44:52, Ex. D; Blackwood MVARs, Part 2 at 00:01-28:17, Ex. E.</p>	

² Citations to the time frames are the counter using VLC Media Player.

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<p>9. Puga's vehicle became disabled and stopped near the intersection of Peach and Catalpa Streets in Hesperia. It faced north on Peach Street.</p> <p><i>Evidence:</i> Blackwood MVARs, Part 3 at 08:30-10:00, Ex. F; Scene Photo, Ex. A.</p>	
<p>10. Blackwood and Kee stopped their patrol vehicles behind Puga's Expedition, with Kee's vehicle on the right of the Expedition and Blackwood's on the left.</p> <p><i>Evidence:</i> Scene Photo, Ex. A; Blackwood MVARs, Part 3 at 09:00, Ex. F; Kee MVARs, Part 1 at 38:35-38:58, Ex. B.</p>	
<p>11. Kee exited his patrol vehicle and took a position on the driver's side of Blackwood's vehicle.</p> <p><i>Evidence:</i> Kee MVARs, Part 1 at 39:00-39:15, Ex. B</p>	
<p>12. Rubalcava joined Kee on the driver's side of the patrol vehicle, and Blackwood moved to a position on the passenger side of his patrol vehicle, standing behind the open passenger door.</p> <p><i>Evidence:</i> Blackwood Dep. 42:10-19, Ex. P.</p>	
<p>13. Over the course of the next approximately 40 minutes, Kee, Rubalcava, and other officers repeatedly ordered Puga to show his hands out the window and exit the vehicle, but Puga did not comply with these orders. Kee also repeatedly attempted to descale the situation and negotiate, converse, and build a rapport with Puga in attempt to</p>	

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<p>have him come out of the car and surrender, without success. <i>Evidence:</i> Kee MVARs, Part 1 at 38:50-1:04:20, Ex. A; Kee MVARs, Part 2 at 00:01-40:20, Ex. C; Blackwood MVARs, Part 3 at 09:30-37:30, Ex F; Blackwood MVARs, Part 4 at 00:01-35:40, Ex G; Mangerino Dep. 42:5-16, Ex. S.</p>	
<p>14. During the course of the standoff, a female passenger exited the vehicle, and informed the officers of Puga's identity. <i>Evidence:</i> Kee MVARs, Part 1 at 44:40-45:15, Ex. B; Adams Dep. 13:7-25, Ex. R.</p>	
<p>15. Kee attempted to break the driver side windows with five rounds of bean bags, but was successful. <i>Evidence:</i> Blackwood MVARs, Part 3 at 14:45-15:03, Ex. F; Kee Dep. 21:1-11, Ex. O.</p>	
<p>16. The Sheriff's Sergeant broke the back window of the Expedition, and, for approximately 30 minutes, shot several volleys of pepper balls into the cabin of the Expedition in an attempt to have Puga exit the vehicle. These efforts were unsuccessful, and the pepper balls appeared to have no effect on Puga. <i>Evidence:</i> Kee MVARs, Part 2 at 01:27-28:50, Ex. C; Adams Dep. 14:14-18:18, Ex. R.</p>	

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<p>17. At approximately 3:40 a.m., Puga finally exited the Expedition with his hands above his head. Although he was shirtless, he faced north away from the officers and not displaying his waistband.</p> <p><i>Evidence:</i> Blackwood MVARs, Part 4 at 33:40-37:49, Ex. G; Edward Mangerino Video at 00:01-00:42, Ex. H.</p>	
<p>18. Puga stood near the driver side door, raising and dropping his hands, for several minutes, then quickly walked to the front of the Expedition and pressed his torso against the hood of the car concealing the front of his waistband from the officers' view.</p> <p><i>Evidence:</i> Blackwood MVARs, Part 4 at 37:50-42:50, Ex. G; Kee Dep. 80:18-81:11, Ex. O; Rubalcava Dep. 53:12-17, 80:11-19, Ex. Q; Blackwood Dep. 33:25-34:6, Ex. P.</p>	
<p>19. When Puga moved to the front of the Expedition, Kee and Rubalcava moved to the southeast corner of the intersection, near the utility pole, such that they were almost in line with the front of the Expedition.</p> <p><i>Evidence:</i> Erin Mangerino Video at 00:01-00:42, Ex. I; Kee Dep. 81:6-82:3, Ex. O; Rubalcava Dep. 79:14-80:10, 95:15-96:11, Ex. Q.</p>	
<p>20. Kee repeatedly asked Puga if he had a gun because Kee was unable to see the front of Puga's pants and waistband; Puga denied having a weapon.</p> <p><i>Evidence:</i> Blackwood MVARs, Part 4 at 40:30-42:20, Ex. G.</p>	

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<p>21. As Kee continued to negotiate with Puga, Puga reached down to his pants waistline, pulled out a gun, and fired it at Kee and Rubalcava.</p> <p><i>Evidence:</i> Gonzalez Video at 05:30-6:47, Ex. J; Erin Marino Video at 00:51-52, Ex. I; Annabelle Botten Interview at 02:00-02:50, Ex. L; Mangerino Dep. 35:2-36:17, 50:14-52:5, Ex. S; Goodson Dep. 26:10-27:3, 31:19-32:11, 49:11-22, 53:6-54:6, Ex. T; Adams Dep. 35:12-36:18, Ex. R; Blackwood Dep. 53:14-16, Ex. P.</p>	
<p>22. Kee fired two volleys of gunfire at Puga. The first volley occurred when Puga reached for the gun in his waistband.</p> <p><i>Evidence:</i> Kee Dep. 9:7-10:16, Ex. O.</p>	
<p>23. After the first volley, Kee went to the prone position on the ground to avoid any gunfire from Puga.</p> <p><i>Evidence:</i> Kee Dep. 30:23-32:9, Ex. O.</p>	
<p>24. During the first volley, Kee was located at a 90-degree angle from Puga, such that his backdrop was Catalpa Street. During the second volley, Kee was facing north up Peach Street and the open desert.</p> <p><i>Evidence:</i> Kee Dep. 86:17-87:13, Ex. O.</p>	

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<p>25. Puga posed a continuing threat of immediate death or serious harm because Kee saw the muzzle flashes that he believed came from Puga's gun, coupled with Puga's earlier freeway shooting incident indicated to Kee that Puga would not hesitate to use a gun, and he was running towards a house. Kee therefore fired his second volley of gunfire when Puga continued to run in the direction of the house.</p> <p><i>Evidence:</i> Kee Dep. 82:10-85:7, Ex. O.</p>	
<p>26. Kee considered warning the residents in the area to stay inside, but did not do so because he risked creating a cross-fire situation.</p> <p><i>Evidence:</i> Kee Dep. 85:19-86:7, Ex. O.</p>	
<p>27. Rubalcava fired two volleys at Puga—approximately five in the first volley, and five to eight in the second.</p> <p><i>Evidence:</i> Rubalcava Dep. 14:3-11, Ex. Q.</p>	
<p>28. In the first volley, Rubalcava returned fire when Puga turned towards Rubalcava and fired the gun</p> <p><i>Evidence:</i> Rubalcava Dep. 17:13-18:20, 80:4-81:11, Ex. Q.</p>	
<p>29. Rubalcava was located on the dirt area near the left-front bumper area of Puga's vehicle when he shot the first volley.</p> <p><i>Evidence:</i> Rubalcava Dep. 26:8-11, Ex. Q.</p>	

Moving Party's Uncontroverted Facts and Supporting Evidence	Opposing Party's Response to Cited Fact and Supporting Evidence
<p>30. In the second volley, Rubalcava shot Puga as he was running away. Rubalcava still considered Puga a threat because he still had the gun in his hand, and he was running towards a residential area, creating a risk of a hostage situation. <i>Evidence:</i> Rubalcava Dep. 23:1-14, 86:23-87:8, Ex. Q.</p>	
<p>31. During the second volley, Rubalcava was standing behind the driver's side door of Blackwood's patrol vehicle, and shooting northbound on Peach Street. <i>Evidence:</i> Rubalcava Dep. 45:20-46:7, 51:3-8, Ex. Q.</p>	
<p>32. Rubalcava did not give Puga a verbal warning that lethal force would be used because there not opportunity to do so. <i>Evidence:</i> Rubalcava Dep. 79:6-80:19, Ex. Q.</p>	
<p>33. Blackwood fired 20 rounds at Puga in two separate volleys. <i>Evidence:</i> Blackwood Dep. 10:11-21, 34:18-38:5, Ex. P.</p>	
<p>34. Blackwood saw the gun in Puga's hand when he fired the first volley, but then paused when he saw Puga stumble. Blackwood fired the second volley because Puga still had the gun which he could have fired at Blackwood or another officer, and Puga was running towards a house, which could have led to a hostage situation. <i>Evidence.</i> Blackwood Dep. 53:14-55:7, Ex. P.</p>	

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<p>35. Blackwood did not shoot in the direction of the northeast corner of the intersection, towards the Botton residence. <i>Evidence:</i> Blackwood Dep. 53:2-5, Ex. P.</p>	
<p>36. Nobody told Plaintiffs that they were required to stay inside their home during the standoff with Puga. <i>Evidence:</i> Botten Dep. 112:9-19, Ex. U; Tanja Botten Dep. 129:20-24, 211:22-213:3, Ex. V; J.B. Dep. 98:12-25, Ex. X.</p>	
<p>37. During the subject incident, Botten Sr. got ready for work and was prepared to leave the home from the opposite direction of where the standoff was taking place with Puga. <i>Evidence:</i> Botten Sr. Interview at 1:45-2:22, Ex. K; Botten Depo. 112:20-113:11, Ex. U.</p>	

Dated: January 30, 2025

Respectfully submitted,

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